

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:20 CV 105 MR WCM

JOHN DOE,)	
)	
Plaintiff,)	
)	
v.)	ORDER
)	
LEES-MCRAE COLLEGE,)	
LEE KING, <i>in his official capacity</i> ,)	
JON DRIGGERS, <i>in his official capacity</i> ,)	
and JOSHUA GAISSER, <i>in his</i>)	
<i>official capacity</i> ,)	
Defendants.)	
<hr style="width: 40%; margin-left: 0;"/>)	

This matter is before the Court on Defendants’ Motion to Dismiss (Doc. 10).

On June 26, 2020, Defendants filed the Motion to Dismiss seeking dismissal of Plaintiff’s Complaint for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6). Doc. 10, p. 1. Twenty-one days later, on July 17, 2020, Plaintiff filed the first Amended Complaint. Doc. 13.

“A party may amend its pleading once as a matter of course within ... 21 days after service of a motion under Rule 12(b)....” FRCP 15(a)(1)(B). Because Plaintiff had a right to amend the complaint within the time period provided by Rule 15(a)(1)(B), the Motion to Dismiss should be denied as moot. See Thomas v. Cumberland County Board of Education, No. 5:10-cv-552, 2011 WL

3664891, at *1 (E.D.N.C. Aug. 18, 2011) (“Because plaintiff had ‘an absolute right to amend [her] complaint ... and need not [have sought] leave of court to do so’ her motion to amend must be ALLOWED. Defendants’ motion to dismiss the original complaint is DENIED AS MOOT, without prejudice to renewal.”) (quoting Galustian v. Peter, 591 F.3d 724, 730 (4th Cir. 2010) (modifications in Thomas)).

IT IS THEREFORE ORDERED that Defendants’ Motion to Dismiss (Doc. 10) is **DENIED AS MOOT**.

Signed: July 20, 2020

A handwritten signature in black ink, reading "W. Carleton Metcalf", written over a horizontal line.

W. Carleton Metcalf
United States Magistrate Judge

